IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO. 1402 OF 2005
WITH CIVIL APPLICATION NO.3420 OF 2005

Shri. Pannalal M. Dave and ors. ....Appellants.
Vs.
The Bombay Municipal Corporation of
Greater Bombay and ors.
...Respondents.

Mr. K.K. Pandey for the Appellants.
Mr. J.J. Xavier for the B.M.C.

CORAM : R.S. MOHITE, J.
DATED : 8/8/2005.

P.C.:

1. Heard both the sides.

2. Admit. By consent, appeal made returnable forthwith.

3. The appeal has been filed against an order dated 15.6.2005 passed by the Trial Court dismissing the suit for default as the plaintiffs and their advocate were absent. The Advocate for the appellants states that it was the first date of the suit for leading evidence. In my view, in the interest of justice, it would be desirable that the suit be decided on merits and one opportunity be

given to the plaintiffs to file their affidavit of evidence. In the circumstance, though the restoration of the suit is objected to by the Advocate appearing for the Municipal Corporation, in the interest of justice, impugned order dated 15.6.2005 is set aside subject to payment of costs of Rs.2000/- by the plaintiffs to the defendants within one week from today. Suit may be listed on board before the Trial Court on 24.8.2005. Both the parties waive notice of the aforesaid date. The Advocate for the plaintiffs assures that the affidavit of evidence will be filed on or before next date. Accordingly, the appeal is disposed of in the aforesaid terms.

4. In view of the above order, civil application does not survive and accordingly, the same is disposed of.

(R.S. MOHITE, J.)